IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 235 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT THROUGH FOOD INSPECTOR

Versus

VINODRAI BALVANTRAI SENDANI

Appearance:

MS HANSABEN PUNANI, APP for Petitioner

MR MB PARIKH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. This is a revision under section 397 read with section 401 of the Criminal Procedure Code at the instance of the State of Gujarat, challenging the order passed by the learned JMFC, Amreli in Criminal Case No.645/98, wherein the learned JMFC passed an order of discharge against the accused.

2. The accused in the said criminal case had filed an application Exh.7 wherein it is contended in substance that they have not committed any offence under the Prevention of Food Adulteration Act and Rules, and in any case their product cannot be said to be "misbranded" and therefore cannot be said to be in violation of Rule 38 of the Prevention of Food Adulteration Rules, 1955 and consequently no offence is deemed to have been committed under any provisions of the Act. The learned JMFC, after hearing the parties, accepted the contentions of the accused and passed an order of discharge.

3. On the facts of the case there is no dispute that the accused were selling "Mahalaxmi" brand Garam Masala for Dal/vegetables, whereof the sample of 50 grams was purchased after appropriate procedure, and sent to the public analyst. The report of the public analyst makes it quite clear that the contents of the said Masala are not found to be adulterated by any standards for the ingredients laid down under the Act, that they comply with all the standards in respect of the quality of each of the ingredients, but the said report expresses an opinion that the product is "misbranded" inasmuch as it is in contravention of Rule 38.

4. It appears that the endorsement of the label which according to the prosecution amounts to violation of Rule 38 is "product complies with P.F. Act."

5. To my mind this is in the nature of a claim of purity, a claim that the product is as per the minimum legal standards laid down, and such claim if made would only give satisfaction to the customer as regards the quality of the product. Such an assurance or guarantee of purity cannot be said to be against the interest of public or society, unless specifically prohibited by law. According to the prosecution, ostensibly Rule 38 creates such a prohibition.

6. Rule 38 of the Prevention of Food Adulteration Rules, 1955 reads as under:

> "38. Labels not to contain reference to Act or rules contradictory to required particulars: The label shall not contain any reference to the Act or any of these rules or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these rules to be included in the label which directly or by implication, contradicts,

qualifies or modifies such particulars or declaration." (emphasis supplied)

To my mind, the learned Magistrate has interpreted only one part of the section. To my mind, there are two aspects of the matter, and both of them militate against the prosecution. A plain reading of the said Rule indicates that the label shall not contain any material which directly or by implication, contradicts, qualifies or modifies such particulars or declaration. Thus, the prohibition is on such material which qualifies, modifies, contradicts or indirectly furnishes an explanation to such particulars or declaration. What is also material and also borne in mind simultaneously is that such contradiction, modification or explanation must pertain to "such particulars or declaration". This phrase viz. " such particulars or declaration" as is made clear in the earlier part of this rule, must be in respect of material "required by the Act or any of these rules to be included in the label". Thus, when the Act or the rules require that the label shall contain information as to certain particulars or declaration, such particulars and declaration shall not be contradicted, qualified or modified by additional information on the label. On the facts of the instant case what can be said at best is that the assurance of quality is superfluous. It is not a label which in any way directs, qualifies or modifies any particulars on declaration which is required to be made by law.

7. It may also be noted on the facts of the case, that there is no controversy that the manufacturer of the goods has expired and is therefore beyond prosecution, and that the applicants who had applied for discharge before the learned Magistrate are only the retailers.

8. I am, therefore, of the opinion that the order of discharge passed by the learned JMFC was amply justified. There is no substance in the present revision and the same is dismissed. Rule is discharged.

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